



March 2, 2019

Via US Mail, Certified

Tony Weiler

Transene Company, Inc.  
1127 57th Avenue  
Oakland, CA 95621

Via US Mail

Christopher Christak  
Transene Company, Inc  
63 Sunset Drive  
Newbury, MA 01951

Kristina Feng  
Agent for service  
Transene Company, Inc.  
1410 Rocklin Court  
San Jose, CA 95131

**Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")**

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Transene Company, Inc., formerly known as Shape Products:

I am writing on behalf of Eden Environmental Citizen's Group ("EDEN") to give legal notice that EDEN intends to file a civil action against Transene Company, Inc., Ika Shape Products ("Discharger" of "Transene/Shape) for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Transene/Shape Products facility located at 1127 57th Avenue in Oakland, California ("the Facility" or "the site").

2151 Salvio Street #A2-319      Concord, CA 94520  
Telephone: 925-732-0960      Email: [edenenvcitizens@gmail.com](mailto:edenenvcitizens@gmail.com)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

**I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED**

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB") Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around November 7, 1992, Transene/Shape Products initially submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. On or around January 22, 2015, Transene/Shape Products submitted an NOI to be authorized to discharge storm water from the Facility under the 2015 Permit. Transene/Shape Products' assigned Waste Discharger Identification number ("WDID") is 2 011009108.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

## II. THE LOCATION OF THE ALLEGED VIOLATIONS

### A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Transene/Shape Products' permanent facility address of 1127 57th Avenue in Oakland, California.

Transene/Shape Products is a manufacturer of chemical formulations for semiconductor and solar cell manufacturing, including copper electroplating chemicals for semiconductor manufacturers worldwide. Facility Operations are covered under Standard Industrial Classification Code (SIC) 2819 – Industrial Inorganic Chemicals, NEC.

Based on EPA's Industrial Storm water Fact Sheet for Sector C – Chemicals, including Agricultural Chemicals, polluted discharges from chemical manufacturing facilities such as the Facility contain pH affecting substances; heavy metals, such as iron and aluminum; total suspended solids ("TSS"); benzene, gasoline and diesel fuels; fuel additives; coolants; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

### B. The Affected Receiving Waters

The Facility discharges into the San Leandro Bay, which is connected to the San Francisco Bay ("Receiving Waters").

The San Francisco Bay is a water of the United States. The CWA requires that water bodies such as the San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The Regional Water Board has issued the San Francisco Bay *Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed.

Furthermore, the San Francisco Bay is listed for water quality impairment on the most recent 303(d)-list for the following: chlordane; dichlorodiphenyltrichloroethane (DDT); dieldrin; dioxin compounds (including 2,3,7,8- tetrachlorodibenzo-p-dioxin); furan compounds; invasive species; mercury; polychlorinated biphenyls (PCBs); PCBs (dioxin-like); selenium, and trash.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

## III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

### A. Failure to Develop and Implement a SWPPP and Site Map

The Discharger has failed to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") for the Facility. Furthermore, its Site Map is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:
- 1) notes, legends, a north arrow and other data to ensure the map is clear, legible and understandable;
  - 2) the facility boundary;
  - 3) storm water drainage areas within the facility boundary and portions of any drainage area impacted by discharges from surrounding areas;
  - 4) the flow direction of each drainage area;
  - 5) on-facility surface water bodies;
  - 6) areas of soil erosion;
  - 7) nearby water bodies such as rivers, lakes and creeks;
  - 8) locations of storm water collection and conveyance systems associated discharge locations and direction of flow;
  - 9) sample locations if different than the identified discharge locations;
  - 10) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDs and/or run-on;
  - 11) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
  - 12) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
  - 13) all areas of industrial activity subject to the General Permit.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

***B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit***

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

***Failure to Collect and Analyze Storm Water Samples***

EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2. and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system *any* storm water samples for the prior five-year period, including the reporting periods 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 to date.

***C. Falsification of Annual Reports Submitted to the Regional Water Board***

Section XXI.L of the General Permit provides as follows:

***L. Certification***

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that

qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

***N. Penalties for Falsification of Reports***

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 18, 2017 and June 26, 2018, Transense/Shape Products submitted its Annual Reports for the Fiscal Years 2016-17 and 2017-2018, respectively. These Reports were signed under penalty of law by Anthony Weiler. Mr. Weiler is the currently designated Legally Responsible Person ("LRP") for Transense/Shape Products.

Mr. Weiler responded "Yes" to Question No. 3 on both of the Annual Reports ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B.2?") However, as discussed above, Transense/Shape Products failed to collect and analyze *any* storm water samples during either the 2016-17 or the 2017-18 reporting years.

***D. Failure to File Annual Reports***

Transense/Shape Products has failed to comply with Section XVI.A of the General Permit, which provides as follows: "The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS."

Transense/Shape Products' Annual Report for the reporting year 2015-16 was due on or before July 15, 2016. However, to date, the Facility has failed to file the Annual Report for reporting period 2015-16,

***E. Deficient BMP Implementation***

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology

("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that Transene/Shape Products has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

Transene/Shape Products' failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

Specifically, although the Facility has had General Permit coverage since 1992, it does not appear to have ever developed and implemented a SWPPP.

#### **F. Discharges In Violation of the General Permit**

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

Specifically, the Facility has neither implemented a SWPPP, nor any observable BMPs. Transene/Shape's industrial operations include potential pollutants such as copper, nickel, tin, silver, zinc, iron and aluminum.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

Transene/Shape Products may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

#### **IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS**

The entities responsible for the alleged violations are Transene Company, Inc., fka Shape Products, as well as employees of the Facility responsible for compliance with the CWA.

#### **V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS**

The range of dates covered by this 60-day Notice is from at least July 1, 2014, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

#### **VI. CONTACT INFORMATION**

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez  
EDEN ENVIRONMENTAL CITIZEN'S GROUP  
2151 Salvia Street #A2-319  
Concord, CA 94520  
Telephone: (925) 732-0960  
Email: [Edenenvironmental@gmail.com](mailto:Edenenvironmental@gmail.com) (emailed correspondence is preferred)  
Website: [edenenvironmental.org](http://edenenvironmental.org)

EDEN has retained counsel in this matter as follows:

CRAIG A. BRANDT  
Attorney at Law  
5354 James Avenue  
Oakland CA, 94618  
Telephone: (510) 601-1309  
Email: [craigabrandt@aatt.net](mailto:craigabrandt@aatt.net)

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Craig A. Brandt.

#### VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

As discussed herein, the Facility's discharge of pollutants degrades water quality and harms aquatic life in the Receiving Waters. Members of EDEN live, work, and/or recreate near the Receiving Waters. For example, EDEN members use and enjoy the Receiving Waters for fishing, boating, swimming, hiking, biking, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study. The unlawful discharge of pollutants from the Facility impairs each of these uses.

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of EDEN's members have been, are being, and will continue to be adversely affected by the failure of the Discharger to comply with the General Permit and the Clean Water Act.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

#### VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages the Discharger's counsel to contact EDEN's counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

AIDEN SANCHEZ  
Eden Environmental Citizen's Group

Copies to:

Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Regional Administrator  
U.S. EPA - Region 9  
75 Hawthorne Street  
San Francisco, CA, 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Roseville, CA 95812-0100

